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Ontario Labour Relations Board HIGHLIGHTS

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NOTICES TO THE COMMUNITY

Holiday Season Board Schedule
The Board's holiday operations schedule is attached.

SCOPE NOTES

The following are scope notes on some of the decisions issued by the Ontario Labour Relations Board in October of this year. These decisions will appear in the September/October issue of the OLRB Reports. The full text of recent OLRB decisions is now available on-line through the Canadian Legal Information Institute www.canlii.org.

Employee – Employment Standards – Reprisal – LM filed an employee application for review claiming she was at all material times an employee of the respondent company – The ESO had previously determined that LM was an independent contractor and the company also took this position – LM was a full-time physiotherapist at one of three clinics owned by the company up until she took pregnancy and parental leave – Upon her return, her hours were reduced and she was not returned to her previous clinic – The Board found that LM was an employee (LM did not sign a contract stating she was an independent contractor, she did not pay a monthly fee, she had no ownership interest in the company and no influence over its business decisions, the company set the rates to charge the clients, and the company supplied all the equipment and clients) and that the company breached her right of reinstatement under s.53(1) ESA – The Board did not find reprisal against LM because the company held an honest belief that LM was an independent contractor and there was no evidence linking the work opportunities offered to LM to her leave or potential need of a further leave – The applicant was owed lost wages for the difference between her new part-time hours and her original full-time schedule and for the period of her unemployment after her resignation – Application allowed

1756982 ONTARIO LIMITED; RE: LAURA MARKOVIC; RE: DIRECTOR OF EMPLOYMENT STANDARDS; OLRB File No. 2602-13-ES; Dated October 23, 2015; Panel: Michael McFadden (15 pages)

Collective Agreement – Jurisdictional Dispute – Carpenters, Local 27 filed a work assignment complaint relating to the material handling of components used to assemble and disassemble an ice rink – Members of Local 27 did the work and LIUNA, Local 506 claimed it should be done by its members – The Board found that the components used to create the ice rink were chattels and that the assembly and disassembly of a temporary structure is not work in the construction industry when that temporary structure is unrelated to a construction project – The Board conducted a review of the relevant factors considered when determining the propriety of a work assignment and determined that the only factor supporting the assignment of the work in dispute to members of Local 27 was economy and efficiency – The other factors, but for skill and ability, tended to support a finding that members of Local 506 ought to have carried out at least

some of the work in dispute – The Board found that having the work in dispute assigned exclusively to members of Local 27 was wrong – The Board directed that the work in dispute be assigned to a composite crew comprised of members of Local 506 and Local 27

BOARD OF GOVERNORS OF EXHIBITION PLACE; RE: CARPENTERS AND ALLIED WORKERS LOCAL 27, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA; RE: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506; OLRB Board No. 1031-14-JD; Dated October 26, 2015, Panel: Harry Freedman (20 pages)

Duty of Fair Representation – Practice and Procedure – HK was representing the applicants but had been denied a PI license to provide legal services – He informed the Board it was his intention to represent the applicants as their "unpaid friend" but did not assert that this was their actual relationship, that their relationship had changed, or that the applicants were no longer clients – The Board found that HK failed to establish he was exempt from the licensing requirements under the Law Society Act or that he was authorized under By-Law 4 to represent the applicants in the matter – HK was disqualified from representing the applicants in the proceedings and was removed as their representative of record – Matter proceeds

MISSISSAUGA SEATING SYSTEMS, A DIVISION OF MAGNA SEATING INC.; RE: HARI HANSRAJ AND SIVA SIVANESAN; RE: CAW CANADA; OLRB file No. 1960-14-U; Dated October 5, 2015; Panel: Derek L. Rogers (7 pages)

School Boards Collective Bargaining Act – Strike – The School Board applied for a declaration under the Labour Relations Act that CUPE called or authorized an unlawful strike pursuant to the School Boards Collective Bargaining Act – The School Board alleged that the central strike was "in respect of local bargaining" because child supervision by Early Childhood Educators and Educational Assistants, which was determined to be a local issue, was withdrawn, along with all general population duty, due to the ongoing central strike – The Board found that there was no evidence whatsoever that any local issue was the reason for the central strike, or put another way, that the central strike was "in respect of local bargaining" – Application dismissed

WINDSOR-ESSEX CATHOLIC DISTRICT SCHOOL BOARD; RE: CANADIAN UNION OF PUBLIC EMPLOYEES; OLRB File No. 1793-15-U; Dated October 19, 2015; Panel: Bernard Fishbein (8 pages)

COURT PROCEEDINGS

Duty of Fair Representation – Judicial Review – CZ sought judicial review over ten years after several decisions relating to his dismissal from the Ministry of Environment and Climate Change – In 2003, CZ filed a grievance related to his dismissal, which was referred to the Grievance Settlement Board – Prior to the hearing, the parties entered into a Settlement Agreement – CZ filed a complaint with the OLRB alleging he was not fairly represented by OPSEU and that the Settlement Agreement was not binding on him – The OLRB found no prima facie grounds for his complaints – The Court held that the Grievance Settlement Board had sole jurisdiction over this matter and that it being dealt with thereafter by the OLRB was appropriate – The Court found that the application for judicial review was not timely and that there was no basis to conclude that the OLRB decisions were unreasonable – The Court found that the application constituted an abuse of process – Application was dismissed

CHARLES ZUBOVITS; RE: MINSTER OF ENVIRONMENT; RE: ONTARIO LABOUR RELATIONS BOARD; OLRB File No. 1368-04-U; (Court File No. 3/15); Dated: September 29, 2015; Panel: Molloy, Kruzick, and Lococo JJ. (7 pages)

Health and Safety – Judicial Review – Practice and Procedure – Following a critical injury to a nurse in the psychiatric unit of the Brockville Hospital (a branch of Royal Ottawa), ONA sought interim and permanent orders from the Board providing, among other things, adequate security staff for the protection of health care workers – The Board issued an interim order requiring the hospital to place a sufficient number of properly trained security staff in the unit – The Board subsequently found on a preliminary ruling that it had the authority under s. 61 of the OHSA to make the orders requested by ONA – The hospital, on judicial review, sought to challenge the Board's interpretation of its authority under the OHSA to make the requested orders – The other parties

argued that for the Court to consider the interim order before the actual application is heard would be a fragmentary approach and that any consideration at this juncture would be premature – The Court noted that the ability of the Board to make an order, interim or otherwise, not specifically addressed by the inspector, was still an issue which could be addressed in the final ruling of the Board and subject to judicial review – The Court found the application to be premature – Judicial Review dismissed

ROYAL OTTAWA HEALTH CARE GROUP - BROCKVILLE MENTAL HEALTH CENTRE; RE: ONTARIO NURSES' ASSOCIATION; RE: A DIRECTOR UNDER THE OCCUPATIONAL HEALTH AND SAFETY ACT; RE: ONTARIO PUBLIC SERVICE EMPLOYEES UNION; RE: ONTARIO LABOUR RELATIONS BOARD; OLRB File No. 2460-14-HS, 2999-14-IO & 3000-14-IO; (Court File No. 15-2123); Dated October 29, 2015; Panel: Marrocco ACJ, Herold, and Whitten JJ. (3 pages)

Certification – Construction Industry – Intimidation and Coercion – Judicial Review – Representation Vote – Sentry sought judicial review of the Board decisions ultimately certifying IBEW, Local 120 as the exclusive bargaining agent for electricians and related workers employed by Sentry – Sentry raised four issues to be reviewed before the Court: 1) the Saturday bargaining unit determination, 2) the union organizer's allegedly threatening behaviour and the Board's resulting decision to order a representation vote, 3) the generic ballot question and definition of "employer", and 4) the voting constituency issue – The Court applied the reasonableness standard of review – The Court found that the Board's decision to determine the bargaining unit based on the employees performing the work on the day the certification application was filed, in this case on a Saturday, was reasonable – The Court found that ordering a representation vote as a consequence for the union organizer's behaviour was reasonable since it was within the Board's discretion and Sentry had requested a representation vote as an alternative to dismissing the application for certification – The Court found nothing unreasonable in regards to the Board's decision on the generic ballot question since the term "employer" was defined on the vote screen notice – The voting constituency issue was found to be reasonable because the Board had rejected Sentry's arguments since they were raised subsequent to the representation vote – Application dismissed

SENTRY ELECTRICAL (CANADA) ULC; RE: INTERNATIONAL BROTHERGOOD OF ELECTRICAL WORKERS, LOCAL 120; RE: ONTARIO LABOUR RELATIONS BOARD; OLRB File No. 0505-14-R; (Court File No. 41/15); Dated October 20, 2015; Panel: Leitch, Sanderson, and Sachs JJ. (7 pages)

The decisions listed in this bulletin will be included in the publication Ontario Labour Relations Board Reports. Copies of advance drafts of the OLRB Reports are available for reference at the Ontario Workplace Tribunals Library, 7th Floor, 505 University Avenue, Toronto.

Pending Court Proceedings

Case name & Court File No.	Board File No.	Status
IBEW Electrical Power Council of Ontario ***(Crossby Dewar Inc.)*** Divisional Court No. 501/15	1697-11-G 1698-11-G	Pending
Labourers' International Union of North America, Local 1059 ***(McKay-Cocker)*** Divisional Court No. 384/15	0883-14-R	Pending
Universal Workers Union, Labourers' International Union of North America, Local 183 ***(Maystar)*** Divisional Court No. 368-15	1938-12-R	Pending
LBM Construction Specialties Inc. Divisional Court No. 353/15	0121-14-R	January 20, 2016
Royal Ottawa Health Care Group - Brockville Mental Health Centre Divisional Court No. 15-2123 **(Ottawa)**	2460-14-HS 2999-14-IO 3000-14-IO	Dismissed
EMT Contractor Division Inc Divisional Court No. 32-15 **(London)**	3514-13-R	Pending
Carlene Bailey Divisional Court No. 173/15	0480-13-U	Pending
Valoggia Linguistique Divisional Court No. 15-2096 **(Ottawa)**	3205-13-ES	Pending
Toran Carpentry Inc. Divisional Court No. 49/15	0229-13-R	January 26, 2016
Sentry Electrical (Canada) ULC Divisional Court No. 041/15	0505-14-R	Dismissed
Royal Ottawa Hospital Divisional Court No. 14-62782 **(Ottawa)**	2461-14-IO	Pending
Dean Warren Divisional Court No. 345/14	2336-13-U	September 22, 2015 Heard, Reserved
Donald A. Williams Divisional Court No. 327/14	1129-13-U	February 18, 2016
PCL Constructors Canada Inc. Divisional Court No. 240/14	3414-11-G	November 26, 2015
Godfred Kwaku Hiamey Divisional Court No. 345/13; 346/13	2906-10-U 3568-10-U	August 13, 2015 Dismissed, Seeking leave to CA